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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/577,852   | 12/26/2006  | Lionel Foster        | 31229-229760        | 4885             |
| 26694  | 7590        | 10/01/2008           | EXAMINER            |                  |
| VENABLE LLP<br>P.O. BOX 34385<br>WASHINGTON, DC 20043-9998 |             | KRAMER, DEAN J       |                     |                  |
|  |             | ART UNIT             |                     | PAPER NUMBER     |
|  |             | 3652                 |                     |                  |
|  |             | MAIL DATE            |                     | DELIVERY MODE    |
|  |             | 10/01/2008           |                     | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/577,852             | FOSTER ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Dean J. Kramer         | 3652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 September 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 6-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 6-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/12/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemmler (964,432).

Kemmler shows a lifting device comprising handle means (8), frame members (7) pivotally connected together through two bolts (3,4), and opposing gripping surfaces having gripping means (10). Kemmler's handle means (8) are shown sloping slightly downwardly (see Figs. 2 and 3) relative to the article (11) being lifted.

In response to applicant's arguments, it is pointed out that the array of teeth (10) collectively forms a gripping surface that can engage certain shaped articles. Depending on the exact shape of the article, at least a portion of these gripping surfaces

could lie substantially parallel to at least two side walls of the article (note: the sidewall of the article could be walls that are not even engaged with the gripping surfaces).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 6-12, and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catlett (6,840,556) in view of either Kemmler or Savedra, Jr. (5,009,558).

Catlett shows a lifting device that substantially shows the invention as set forth in claims 1-12 and 14-21 of the instant application except that its handle means (18,28) are not shown as sloping downwardly with respect to a gripped article as is called for in claims 1 and 21.

However, both Kemmler and Savedra, Jr. show lifting tools having downwardly sloping handles when engaged with an article being lifted. Such a downward design allows for one or more users to more easily carry a heavy load.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to at least slightly angle Catlett's handles (18,28) downwardly relative to the cylinder being lifted as taught by Kemmler or Savedra, Jr. in order to create a more ergonomic arrangement that would result in better leverage for

lifting heavy loads thereby allowing users to carry the load well above the ground while maintaining their hands at a comfortable and more natural position.

Regarding claim 12, Catlett's strips (40) are retained through adhesive. In regard to claims 14-21, Catlett's first portions (20,22,30,32) of the frame members can be pivoted to a position in which they extend coplanar away from each other. In the closed position (Fig. 3), the gripping surfaces of the frame members are disposed parallel to the side walls of the tank.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Catlett in view of either Kemmler or Savedra, Jr. as applied to claim 12 above, and further in view of Purcell (5,601,324).

Purcell shows a rubber gripping means (42a) retained above a lower lip (46) as best shown in Figure 2a.

It would have been obvious to a person having ordinary skill in the art to attach the modified Catlett rubber gripping means (40) above a lower lip as taught by Purcell in order to more securely retain such a gripping means to the frame's inner surface.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (571) 272-6926. The examiner can normally be reached on Mon., Tues., Thurs., Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dean J Kramer/  
Primary Examiner, Art Unit 3652

djk  
9/26/08